

## Chapter 8

## Accounts, Compensation and Distributions

## RULE 608.01 REQUIRED FORM OF ACCOUNTS

As provided in Probate Code Sections 2620 and 10900, all accounts filed in decedent estate, guardianship and conservatorship proceedings, shall contain a summary or recapitulation showing:

- A. Property included in all inventories or, if not first account, amount chargeable from prior account and property included in all inventories filed after the ending date of the previous account;
- B. Amount of receipts, excluding property listed in an inventory and amounts reported as a gain on sale;
- C. Gains on sales;
- D. Other acquisitions of property;
- E. Disbursements, excluding amounts reported as a loss on sale;
- F. Losses on sales;
- G. Other dispositions of property; and
- H. Property on hand.

A suggested form of summary follows:

SUMMARY OF ACCOUNTS

This account covers the period from \_\_\_\_\_, 19\_\_\_\_  
to \_\_\_\_\_, 19\_\_\_\_, both dates inclusive.

Your petitioner is chargeable and is entitled to the credits, respectively, as set forth in this summary of account. The attached supporting schedules are hereby incorporated herein by reference.

CHARGES

Amount of Inventory and Appraisal (or, if subsequent account, amount chargeable from prior account and amount of all inventories filed after ending date of previous account)	\$ _____
Receipts During Account Period (Schedule A)	\$ _____
Gains on Sales (Schedule B)	\$ _____
Other Acquisitions of Property (e.g., Advancements, see Rule 608.06) (Schedule C)	\$ _____
TOTAL CHARGES	\$ _____

CREDITS

Disbursements During Account Period (Schedule D)	\$ _____
Losses on Sales (Schedule E)	\$ _____
Other Dispositions of property (e.g., Property Distributed, Homestead or Other Property Set Apart, Property Abandoned) (Schedule F)	\$ _____
Property on Hand (Schedule G)	\$ _____
TOTAL CREDITS	\$ _____

All trust accounts shall comply with Probate Code Section 16063 and may employ the same organizational structure as that described above, substituting an identification of the property received by the trustee from a settlor for an inventory.

As indicated, the summary must be supported by detailed schedules. The schedule of receipts should show the date received, source of the funds (e.g. dividend or interest) and the amount received. The schedule of disbursements should show the date of payment, to whom money was disbursed, the reason for payment (e.g. medical bill, filing fee, or bond premium), and the amount paid. The schedule of property on hand should describe each item and show the amount of cash on hand and other property at appraised value or balance thereof (if a portion has been sold, disposed of, or principal receipts collected). The description of cash items must include the name of the institution, the account number and the account balance.

When principal is collected (such as the principal portion of a periodic payment on an installment note), the principal receipts must be separated from income receipts. Only income receipts are included in the summary. The amount of principal receipts collected should not be included in the amount of total receipts (Schedule A), and it should not be included in the amount upon which statutory fees are calculated.

In addition to the required schedules (A-G), optional informational schedules can be attached to explain the account or proposed distribution. These should not be used in place of the required schedules. The following are examples of informational schedules: a schedule that explains the principal collections on a promissory note, showing the date and amount of each receipt with an allocation between principal and income; a schedule that explains the receipts and disbursements attributable to specifically devised property [See Probate Code Section 12002 and Estate of McSweeney (1954) 103 Cal.App.2d 787, 268 P.2d 107]; a schedule that shows the computation of interest payable under Probate Code Section 12001, 12003-5; a schedule that shows the estimated market value of the assets on hand; a schedule which explains in detail the type and value of the property each distributee is to receive in a final account (particularly in the case of a non-pro rata distribution); and a schedule that shows an allocation of distributable net income.

Reports accompanying decedent's estate accounts must include a list of all liabilities of the estate (including unpaid creditors' claims but excluding unpaid representatives' and attorneys' compensation and identify any property providing security for the payment of any liability. (See Probate Code Sections 10900(c) & (d) and Rules 605.06 and 608.08.)

Whenever property is to be distributed to a trustee, the account should contain sufficient detail to allow a proper allocation between income and principal.

**RULE 608.02      PETITIONS FOR DISTRIBUTION WITHOUT AN ACCOUNT AND  
WAIVERS OF ACCOUNT**

Although a preliminary or final distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the court to ascertain that the estate is solvent. The Court will not permit distribution in an insolvent estate without an account.

A waiver of account or an acknowledgment that an interest has been satisfied on final distribution must comply with Probate Code Section 10954. There is no need to explain the difference between property included in the inventory or inventories and the property on hand or to be distributed if an account is waived, but all property on hand or proposed for distribution must be listed even if an account is waived (see Rule 608.20 below). In general, reports of administration, requests for compensation, and petitions for preliminary or final distribution must comply with Rules 608.03 through 608.22 below, whether or not accompanied by an account.

**RULE 608.03      GENERAL      INFORMATION      ON      AND      COMPUTATION OF  
COMPENSATION**

The court prefers to determine the amount of compensation in decedents' estates, guardianships, conservatorships, and trusts at the time an account is considered. In accounts for decedents' estates, or in petitions for distribution accompanied by waiver of accounting, the report must state the amount of the personal representatives' and attorneys' compensation requested, and also show the method of computation.

Example of statutory compensation computation:

Assets as per:

Inventory	\$ _____
Receipts per Schedule A	\$ _____
Gains per Schedule B	\$ _____

Less:

Losses per Schedule C	\$ _____
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TOTAL ESTATE ACCOUNTED FOR \$ \_\_\_\_\_

Rate and  
Block

Compensation

_____	_____
_____	_____

TOTAL COMPENSATION \$ \_\_\_\_\_

Allowances on account of statutory compensation must be for services rendered up to that time and, in any event, the last twenty-five percent (25%) of statutory compensation generally will not be allowed prior to the approval of the final account and the decree of distribution. Similarly, the court prefers to reserve determination of all requests for compensation for extraordinary services to the time of final distribution. (See Probate Code Section 10832)

A petition for compensation for extraordinary services by the personal representative or attorney in connection with a decedent's estate or for any compensation in connection with a guardianship or conservatorship proceeding should set forth in the report the amount of the requested compensation, the method of calculation, including a detailed description of the services, and the number of hours expended. (See Law Revision Comment to Probate Code Section 10801 for an identification of extraordinary services and Estate of Walker (1963) 221 Cal.App.2d 792, 34 [Cal.Rptr. 832](court discretion to award).) Each extraordinary service for which compensation is claimed must be stated separately.

In any request for compensation, no more than five pages of detailed time records may be attached as an exhibit. In requests for compensation based on complicated or intricate cases, counsel may wish to lodge detailed time materials with the court for review. For example, handwritten logs kept by conservators of time spent should be summarized in the report that will be a part of the permanent court file, and the logs in excess of five pages may be lodged for review. Similarly, time records of a personal representative or counsel should be summarized in a petition for compensation; detailed materials in excess of five pages may be lodged for review but normally should not be filed. (See Rule 601.03.)

**RULE 608.04      REQUEST FOR COMPENSATION BASED ON SERVICES BY A  
PARALEGAL**

If compensation is requested for extraordinary services rendered by a paralegal performing under the direction and supervision of an attorney, the petition should describe why it was appropriate to utilize the paralegal's services in the particular case, the qualifications of the paralegal (including education, certification, continuing education and experience), the hours spent, and services performed. In addition, the petition should provide the court with assurance that the amount requested for the extraordinary services of the attorney and paralegal combined do not exceed the amount appropriate if the attorney had provided the services without the paralegal's assistance.

**RULE 608.05      REQUEST FOR COMPENSATION IN ESTATES ADMINISTERED  
UNDER INDEPENDENT ADMINISTRATION OF ESTATES ACT**

Petitions in which compensation is requested for extraordinary services shall expressly state whether the estate is being administered under the Independent Administration of Estates Act. The court may inquire whether and to what extent the administration under the Act simplified or reduced (or reasonably should have simplified or reduced) the efforts of the personal representative and attorney, and such information shall be taken into consideration in the determination of compensation that will be allowed for extraordinary services.

**RULE 608.06      REQUEST FOR COMPENSATION IN DECEDENTS' ESTATES  
LACKING CASH FOR PAYMENT**

The Court will not order full payment of compensation if there is insufficient cash in the estate. The Court will allow and approve compensation -- but only award and order them paid to the extent there is cash on hand to do so. If heirs or devisees wish to have property distributed in kind when there are insufficient liquid assets in the estate, they may advance funds to the estate. The advancement should be shown as a miscellaneous acquisition of property (Schedule C), and this sum should be excluded in calculating any statutory compensation.

**RULE 608.07      SURCHARGE IF COMPENSATION PAID BEFORE COURT ORDER**

There is no authority for the payment of any compensation in decedents' estates, guardianships, or conservatorships in advance of a court order authorizing the payment. Ordinarily, the court will surcharge representatives or attorneys interest at the rate prescribed by Code of Civil Procedure Section 685.010 for judgments from the date of payment to the date of the order authorizing the compensation to be paid, unless the written consent of the affected devisees or heirs of a decedent's estate is filed with the court and the amounts paid are reasonable and proper.

**RULE 608.08      CREDITORS' CLAIMS**

Each report or account submitted by a personal representative filed more than four months after issuance of letters shall contain an allegation that notice of administration has been given to each known or reasonably ascertainable creditor who has not been paid.

It is not sufficient in a report accompanying an account or in a report where an accounting is waived to allege merely that all claims have been paid, but the claims presented (before July 1, 1988) or filed must be listed showing the claimant, date notice was given to creditors generally, the amount claimed, and the disposition of each claim. If any claim has been rejected in whole or in part, or otherwise has not been paid, satisfied or adequately provided for, the date of service of notice of rejection of claim, the date the claim is alleged to be due (if not due at the time the notice of rejection is given), whether an action has been brought on a rejected claim and any property that is security for the claim shall be included in the report.

If any debt was paid without a claim having been filed or presented, the report must contain the allegations required by Probate Code Sections 9154 and 11005. As indicated in Rule 608.01, a separate schedule specifying the debts paid with and without formal claims may be appropriate. The foregoing information about claims must appear in the final report even though it may have appeared in whole or in part in prior reports.

**RULE 608.09      ADMINISTRATION COSTS**

A final account will not be approved and petition either for final distribution or to terminate proceedings will not be granted unless the court is satisfied that all costs of administration, including charges for legal advertising, bond premiums and probate referees' fees have been paid.

**RULE 608.10      TAXES**

Each petition for final distribution of a decedent's estate must contain an allegation that all personal property and income taxes that are due and payable have been paid. In addition, they must disclose whether a federal or California estate (and generation-skipping transfer) tax return is required, and whether there is a need for an order or orders prorating such tax or taxes under Probate Code Section 20100 et seq.

If the estate inventoried is appraised at more than \$400,000 and more than \$100,000 in the aggregate has been distributed or is distributable to the beneficiaries or heirs who do not reside in California, final distribution will not be permitted unless there is first filed with the clerk a state income tax certificate issued by the Franchise Tax Board pursuant to Revenue and Taxation Codes Section 19262 certifying that all state personal income taxes imposed upon the decedent or his or her estate have been paid or payment thereof is secured. Such certificates are issued upon the condition that the decree of distribution be signed by the court on or before a specified date. Decrees of final distribution will not be signed after the expiration of the date specified in the

certificate. Although such certificate is not required and will not be issued by the Franchise Tax Board on preliminary distributions, attorneys are cautioned that adequate funds must be withheld on preliminary distributions to pay or secure payment of such taxes on final distribution as final distribution will not be allowed in the absence of such a certificate.

This section applies to a distribution to a non-resident trustee, notwithstanding the residence of the beneficiaries.

**RULE 608.11 HEALTH CARE BENEFITS**

Each report of administration of a decedent's estate must contain an allegation either that a notice of death has been provided to the Director of Health Services as required by Probate Code Sections 215 and 9202 or that no such notice is required. (See Welfare & Institutions Code Section 14009.5)

**RULE 608.12 CHARACTER OF PROPERTY**

Any petition for distribution (whether involving a testate or intestate estate) in which the character of property would affect distribution shall contain an allegation concerning the separate or community property nature of assets. If community, the petition must also specify whether the decedent's half interest or both spouses' interests are described.

**RULE 608.13 ELECTION BY SPOUSE TO SUBMIT PROPERTY TO ADMINISTRATION**

Any election by the surviving spouse to submit property to administration under Probate Code Sections 13502-13503 must be on file before the hearing on a petition to distribute the affected asset.

If the spouse requests to file an election after the four month period allowed by Probate Code Section 13502(b) (which affects the decedent's property or the spouse's property or both), the Court will require a declaration from the spouse stating all of the following:

- A. the reason for the late request;
- B. that the spouse is aware of any resultant additional fees and costs; and
- C. whether there are any creditors of the decedent who have not presented or filed claims (including any which are disputed or contingent).



If there are any claims, the request for authority to file a late election must be set for hearing and all creditors given 15 days mailed notice of hearing together with a copy of the petition.

**RULE 608.14        DISCLAIMERS**

A copy of any disclaimer must be on file prior to the hearing of any petition for distribution of any affected asset.

**RULE 608.15        NOTICES OF PROPOSED ACTION IN ESTATES ADMINISTERED  
PURSUANT TO INDEPENDENT ADMINISTRATION OF ESTATES  
ACT**

In any report concerning estates being administered under the Independent Administration of Estates Act, all independent acts taken without prior court approval during the period covered by the report shall be set forth and described [including a description of each item of property sold, the name of the purchaser (except for securities), and sale price], and an allegation made that the 15 day [or 20 day, if served by mail before July 1, 1988] action notice required by former Probate Code Section 591.4 or current section 10580 was duly served, and that no objection was received, or that all interested parties waived notice or consented to the action. The original of the action notice with attached affidavits of mailing, and any consent obtained in lieu of an action notice shall be filed with the court.

**RULE 608.16        DISTRIBUTIONS TO ASSIGNEES**

If the personal representative has any reason to believe that a beneficiary has assigned an interest in the estate (other than to a trust revocable by the beneficiary) or that distribution will be made to any other transferee or attorney in fact, the representative may wish to seek specific court approval in the petition for final distribution under Probate Code Section 11604.

**RULE 608.17        NOTICE TO TRUST BENEFICIARIES**

If a petition for distribution seeks the appointment of a trustee, the court will require notice to all vested and contingent beneficiaries in being. (See Rule 612.02, *infra*.)

See Rule 602.06 for notice requirements if a personal representative presents a report, account, or petition that affects the beneficiary of a trust of which the personal representative is the sole trustee.

**RULE 608.18       NOTICES     IN     GUARDIANSHIP     AND CONSERVATORSHIP  
                  ACCOUNTS**

In guardianships and conservatorships, notice must be given to the former minor or former conservatee on the settlement of the final account. Notice must also be given to any representative of the estate of a deceased ward or conservatee. Notice will be dispensed with when the written approval of the former ward or former conservatee is filed with the court.

**RULE 608.19       ORDERS DISPENSING WITH ACCOUNTS IN GUARDIANSHIPS  
                  AND CONSERVATORSHIPS**

If a guardianship or conservatorship estate meets the requirements of Probate Code Section 2628, a petition to waive accounts should be submitted. Orange County Form 890 is available and may be used to make ex parte petition.

**RULE 608.20       COMPLETENESS OF PETITIONS, ACCOUNTS AND ORDERS**

Each account, report of administration, and petition for final (but not necessarily preliminary) distribution must identify all assets on hand (including cash) at the end of the accounting period or at a specified date reasonably close in time to the date a report or petition not accompanied by an account is presented to the court. However, complete legal descriptions need only be included when distribution is requested.

Each petition for distribution must list and describe in detail all property to be distributed in the body of the petition, in the prayer, or by a schedule incorporated in the petition by reference. Descriptions by a reference to the inventory are not acceptable. The description of any interest in real property (including a security interest) must include the complete legal description and the street address or other commonly used mode of identification.

Unless any interested party requests a different allocation by the court under Probate Code Section 11624, the cost of each proceeding for a preliminary distribution shall be borne by the estate. The allocation of the cost of the proceeding must be included in the order.

If a reserve is requested, the use of property reserved must be specifically described (income taxes, transfer taxes, closing costs, etc.).

In orders settling accounts, it is proper to use general language approving the account and report and the acts reflected therein, but such orders may not merely recite that the petition as presented is granted. Orders approving and/or settling reports and/or accounts must also identify the assets on hand, specifically noting the amount of cash and cash equivalents (such as certificates of deposit) included in the balance. For example: "The personal representative has in his/her possession belonging to the estate, after deducting the credits to which he/she is entitled, a balance of property on hand in the amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ is in cash and/or cash equivalents."

An order and decree of distribution must be complete in itself. (See Rule 601.13) The property distributed to each distributee should be listed and set forth in detail. The description of any real property (including a security interest) must include the complete legal description and the street address or other commonly used mode of identification. If an omnibus clause is included for after discovered property, it must specifically state to whom the property will be distributed and in what proportions.

If property is to be distributed, the order and decree of distribution or order settling the final account in a guardianship or conservatorship should state that the personal representative, guardian or conservator shall be entitled to discharge upon filing receipts of distributees and submitting an Affidavit or Declaration for Final Discharge (Orange County Form 105.3).

**RULE 608.21      DOCUMENTS TO BE ON FILE BEFORE HEARING ON PETITION  
FOR DISTRIBUTION**

The court will require the following documents to be on file before making an order for distribution:

- A. If distribution is to be made to the guardian of a minor, a certified copy of the letters of guardianship;
- B. If distribution is to be made to a parent for the benefit of a minor under Probate Code Section 3401, a copy of the written assurance of such parent;
- C. If distribution is to be made for the benefit of a minor under Probate Code Section 3410 et seq., a separate petition and order under the minor's name with a different case number is required. A copy of such order must be filed in the decedent's estate proceeding;

- D. If distribution is to be made to a person collecting assets under Probate Code Section 13100 or 13200, the required affidavit or declaration under penalty of perjury of such person. If distribution is to be made to a person pursuant to a court order made under Probate Section 13150, et seq., or 13650, et seq., a copy of the order;
- E. If distribution is to be made to the personal representative of the estate of a deceased beneficiary, a certified copy of the representative's letters;
- F. If distribution is to be made to a testamentary trustee, the consent of the trustee to act;
- G. If distribution is to be made to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act (Probate Code Section 3900 et seq.), the written notice of acceptance of the office contemplated by Probate Code Section 6347(b) by the custodian; and
- H. If preliminary distribution under Probate Code Section 11620 or 11623 is requested, the inventory and appraisal listing each asset to be distributed.

**RULE 608.22 FINAL DISCHARGE**

When final discharge is sought after distribution, an Affidavit or Declaration for Final Discharge (Orange County Form 105.3) must be submitted.